

TERMS AND CONDITIONS OF DESIGN SERVICES AGREEMENT BETWEEN OWNER AND CONSULTANT

ARTICLE I: BASIC SERVICES

1.0 The Consultant's Basic Services consist of the Phases described as follows and include, but are not limited to, normal architectural, structural, mechanical and electrical engineering services. The Consultant shall obtain written approval of the Owner's Representative or his designee member before proceeding with each phase. Nothing in this agreement shall be construed as placing any obligation on the Owner to proceed with any phase beyond the latest phase approved by the Owner's Representative.

1.0.1 COMPUTER AIDED DESIGN (CAD) DELIVERABLES

The Consultant shall submit CAD Deliverables as part of the submittal of each phase of the Project for approval by the Owner. Consultants not using AutoCAD 2009 or a newer version may produce their work from any CAD program, and deliver it to Owner in dxf or dwg format. However, before providing final construction documents and record drawings, Consultant must translate or have translated, their CAD files to AutoCAD 2009 or newer (dwg) files, and such files shall be reviewed for format compliance by the Owner, in accordance with the Owner's CAD Deliverable Guidelines in effect on the date of the contract between Owner and Consultant.

1.0.2 COST ESTIMATES

The Consultant shall submit in writing to the Owner's Representative a statement of estimated construction cost concurrent with the submittal of each phase of the design work.

1.1. SCHEMATIC DESIGN PHASE

- 1.1.1. The Consultant shall confer with the Owner to ascertain the requirements of the Project and shall confirm the viability of such requirements to the Owner's Representative.
- 1.1.2. The Consultant shall prepare Schematic Design Studies consisting of drawings and other documents illustrating the scale and relationship of Project components for approval by the Owner's Representative

1.2 DESIGN DEVELOPMENT PHASE

- 1.2.1. The Consultant shall prepare from the approved Schematic Design Studies for approval by the Owner's Representative, the Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to structural, mechanical and electrical systems, materials and such other essentials as may be appropriate.
- 1.2.2 The Consultant shall assist the Owner's Representative in filing any required documents for the approval of governmental authorities having jurisdiction over the Project, when applicable.

1.3 CONSTRUCTION DOCUMENTS PHASE

- 1.3.1. The Consultant shall prepare from the approved Design Development Documents, for approval by the Owner's Representative, Construction Documents setting forth in detail the requirements for the construction of the entire Project including information necessary to bid the Project.
- 1.3.2. The Consultant shall submit in writing to the Owner's Representative, realistic construction milestones for the Project.
- 1.3.3. The Consultant shall obtain written approval of the appropriate authority of all proposed connections to private or public utility systems or public and private roads and streets, when such connections are planned as part of the Project.
- 1.3.4 In the case of new construction, the Consultant shall provide the Owner's Representative with written certification and summary verification calculations that Construction Documents comply with the latest issue of ASHRAE Standard 90.1, Energy Standard for Buildings except for Low-Rise Residential Buildings.

1.4 BIDDING PHASE

- 1.4.1. The Consultant, following the Owner's Representative's approval of the Construction Documents and the Final Statement of Estimated Construction Cost, shall attend a pre-bid meeting and assist the Owner in obtaining and reviewing bids. The Owner's Representative will prepare the Construction Contract award.

1.5 CONSTRUCTION ADMINISTRATION PHASE

- 1.5.1. The Construction Administration Phase will commence with the award of the Construction Contract and will terminate with final acceptance by the Owner's Representative.
- 1.5.2. The Consultant, as Designer, shall provide for Administration of the Construction Phase as set forth in the State of Missouri Standard General Conditions.
- 1.5.3. The Consultant shall advise and consult with the Owner's Representative and shall have authority to act on the behalf of the Owner to the extent provided the Designer in the General Conditions unless otherwise modified in writing.
- 1.5.4. The Consultant shall at all times have access to the Work.
- 1.5.5. The Consultant shall visit the Project site as often as necessary to satisfy him/herself that the work is proceeding in accordance with the drawings and specifications and as necessary to discharge all the Designer's responsibilities in the Construction Documents. At a minimum this includes; a pre-construction meeting, one progress meeting per month during the construction period, a substantial completion inspection, a final inspection, and any other visits required by the construction documents for milestone events. Within one week of the preconstruction meeting, the Consultant shall provide to the Owner an anticipated schedule of visits based on construction milestones, periodic intervals or both. For each site visit made, the Consultant shall submit to the Owner's Representative a written progress and observation report summarizing each visit and presenting the current status of the Project with regard to pending changes, design

or construction problems and schedule variations. The Consultant shall note in the heading of the report the reason for the visits, i.e., included in the initial schedule, at the Owner's request, or other additional site visits at no cost to the Owner. Other additional site visits necessitated by the Consultant's error, omission, unauthorized changes or negligence, shall be accomplished without additional cost to the Owner. All observations, including those specified to be performed by the Designer in the Contract Documents and all clarifications required, shall be scheduled, performed and issued in a manner to prevent delay to the Contractor. The Consultant shall report construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work which are not in the best interest of the Owner with regard to cost, schedule, etc. to the Owner's Representative. Except as provided herein, the Consultant shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Construction Documents, nor for the acts or omissions of the Contractor or Subcontractors, or any other person performing work.

- 1.5.6. Based on such observations at the site on the approved Contractor's construction schedule, and on the Contractor's written request for payment, the Consultant shall determine the amount owed to the Contractor and shall certify requests for payment in such amounts. The Consultant shall recommend payment on the basis of Work complete to date; and that to the best of the Consultant's knowledge, information and belief, the quality of the Work is in accordance with the Construction Documents. Such certification shall not be deemed to represent that the Consultant has made any examination to ascertain how and for what purpose the Contractor has used the moneys paid.
- 1.5.7. The Consultant shall act as the initial interpreter of the requirements of the Construction Documents. However, this paragraph shall in no way abrogate the provisions of Article IV of this Agreement.
- 1.5.8. The Consultant may recommend rejection of Work which does not conform to the Construction Documents. Whenever the Consultant considers it necessary or advisable to confirm the requirements of the Construction Documents, he may request approval of the Owner's Representative for special inspection and/or testing.
- 1.5.9. The Consultant shall review and approve shop drawings, samples, and other information request or submissions of the Contractor for conformance with the design concept of the Project and for compliance with the information given in the Construction Documents. The Consultant shall respond to and return said items to the Contractor within ten (10) consecutive working days of receipt thereof.
- 1.5.10. The Consultant shall prepare Contract Change Requests in accordance with the form and procedures prescribed by the Owner's Representative.
- 1.5.11. The Consultant must recommend approval or disapproval of all Contractor requests for substitutions as required in the contract General Conditions.

1.5.12. During the warranty period of the Construction Contract(s), the Consultant shall on request work with the Owner's Representative to secure correction of any defects that become apparent. Services provided by the Consultant during the warranty period shall be provided at no cost to the Owner if said services are necessary to correct defects in the Work resulting from errors or omissions in the design prepared by the Consultant. However, if such services are provided to correct defects resulting from defective material or poor workmanship provided by the Contractor, said services shall be considered Consultant Contract Changes and the Consultant compensated accordingly provided such services have been previously authorized in writing by the Owner's Representative.

ARTICLE 2: CONSULTANT CONTRACT CHANGES

- 2.0 Consultant Contract Changes shall be provided only upon prior written authorization by the Owner's Representative and shall be paid for by the Owner as herein before provided. The following examples of Consultant Contract Changes are representative of those that may be authorized, unless such services have been included as part of Basic Services under Article I.
- 2.1. If the Owner's Representative determines that full-time on-site construction observation is required, then the Consultant shall provide one or more full-time Project Representatives. Such full-time Project Representative(s) shall be selected, employed and directed by the Consultant.
- 2.2. Providing special analyses of, and programming for, the Owner's needs.
- 2.3. Providing financial feasibility or other special studies.
- 2.4. Providing planning surveys, site evaluations, environmental or comparative studies of prospective sites.
- 2.5. Providing design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Project.
- 2.6. Providing extraordinary services to investigate existing conditions of facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the Owner's Representative, beyond that which normally is required to perform the Basic Services considering the nature of the Project.
- 2.7. Providing formal life-cycle cost studies of alternative building systems when requested by the Owner's Representative.
- 2.8. Providing interior design, graphics design, and other services required for or in connection with the selection of furniture, furnishings and equipment.
- 2.9. Providing revisions of Drawings, Specifications or other documents when such revisions are required by changes to previously approved design criteria.
- 2.10. Providing consultation concerning replacement of any Work damaged by fire or other causes during construction.
- 2.11. Providing professional services made necessary by the default of the Contractor or by major defects in the Work of the Contractor in the performance of the Construction Contract.
- 2.12. Providing services or special consultants for other than the normal architectural, structural, mechanical and electrical engineering services for the Project.
- 2.13. If such services are deemed necessary by the Owner's Representative, the Consultant shall retain and compensate a qualified, registered land surveyor to prepare a certified land survey of the site giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and all available data

pertaining to existing buildings, other improvements, trees; and service and utility lines, both public and private, above and below grade, including inverts and depths. The Owner's Representative shall approve the selection of the surveyor before he may commence work.

- 2.14. If such services are deemed necessary by the Owner's Representative, then the Consultant shall furnish the services of a soils engineer or other similar consultant. Such services may include but not be limited to, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, with appropriate professional analysis thereof. The Owner's Representative shall approve the selection of the soils engineer before he may commence work.
- 2.15. Preparing to serve or serving as expert witness in connection with any public hearing, or legal proceeding where the Consultant is not a named party to such a hearing or proceeding.
- 2.16. Costs which may be in addition to the compensation for Basic and/or Consultant Contract Changes and may include but are not necessarily limited to actual cost of reproduction and postage or delivery of completed Construction Documents, above the amount included in Basic Services. The Consultant shall be paid only for those costs set out under Compensation for Contract Changes Section of this Agreement. Payment for said services shall be at direct cost to the Consultant unless specifically set out otherwise in this Agreement.
- 2.17. The cost of other services requested by the Owner and performed by the Consultant.

ARTICLE 3: CONSULTANT'S RESPONSIBILITIES

- 3.0. The Consultant agrees to accept the Owner's program and budget and further agrees to use reasonable skill and care to accomplish said Project within the intent of the program and established budget. In the event the Consultant determines that the Project cannot be accomplished within the established budget, he shall notify the Owner's Representative of this fact in writing prior to completion of the Design Development Phase, so that the Project scope can be reviewed and modified if necessary.
- 3.1. The Consultant agrees to fully inspect the job site prior to commencing his Work and shall use reasonable care to verify that all relevant information supplied to him by the Owner or Owner's Representative is correct and accurate.
- 3.2. The Consultant shall generate minutes for all meetings concerning this project and distribute copies to all participants, and the Owner's Representative if not a participant, within 3 working days after each meeting.
- 3.3. The Consultant agrees to provide all drawings and reproductions prior to completing the Construction Documents.
- 3.4. The Consultant shall provide evidence of an appropriate professional liability insurance policy, with minimum limits of 20% of the total allowable construction costs. The policy required by this section of the Contract shall contain a stipulation that the Owner will receive a thirty (30) calendar day advance notice of any policy cancellation.
- 3.5. At the completion of the Project, the Consultant shall provide the Owner's Representative with one set of reproducible 4 mil. Polyester film Record Drawings and one set of prints. The construction documents shall show all construction features including changes made during the construction process and including all buried and concealed utilities accurately located as

provided in the State of Missouri Standard General Conditions. The Consultant shall also provide Computer Aided Design (CAD) record files. The files shall be in compliance with the Owner's CAD deliverable Guidelines.

- 3.6. The Consultant shall see that the design of all connections to private or public utility systems or public roads and streets comply with applicable ordinances, regulations and codes.
- 3.7. If Consultant renders basically Architectural Services, he hereby agrees that all plans, specifications, detail drawings, etc., for Engineering work pertaining to heating, ventilation, refrigeration, electrical, or other mechanical or structural work shall be done by a registered professional Engineer in his own organization, or agrees to employ without additional cost to the Owner, and subject to the approval of the Owner's Representative, the services of registered professional Engineers regularly engaged in the work. The Consultant shall enter into Contract agreements with such registered professional Engineers which Contracts shall bind the Engineers in terms and responsibilities substantially as set forth herein regarding design and inspection services.
- 3.8. If the Consultant renders basically engineering services, he hereby agrees that all plans, specifications, detailed drawings, etc., for architectural work pertaining to this Project shall be done by a registered professional Architect in his own organization, or agrees to employ without additional cost to the Owner, and subject to the approval of the Owner's Representative the services of a registered professional Architect regularly engaged in the work. The Consultant shall enter into a Contract agreement with such registered professional Architects, which Contract shall bind the Architects to terms and responsibilities substantially as set forth herein regarding design and inspection services.
- 3.9. The Consultant shall request the Owner's approval of any additional professional consultant services retained which were not included in the Consultant's original proposal.
- 3.10. Local code enforcement officials have no jurisdiction on State property. Projects designed through the Division of Facilities Management, Design and Construction shall be designed in accordance with the latest edition of codes and standards published by the following: The Americans With Disabilities Act (ADAAG); International Building Code (IBC); National Electric Code (NEC); International Mechanical Code (IMC); International Plumbing Code (IPC); Life Safety Code (NFPA 101); American Society of Heating Refrigerating and Air-Conditioning Engineers ASHRAE Standard 90.1 for Energy Efficient Design of New Buildings except Low-Rise Residential Buildings), American Society of Mechanical Engineers; American National Standards Institute (ANSI); American Concrete Institute (ACI); Prison Rape Elimination Act (PREA); Sheet Metal and Air Conditioning Contractor's National Association (SMACNA) and Boiler and Pressure Vessel Act of the State of Missouri. The Consultant shall also include any other codes or standards which are applicable to the project but not listed above.
- 3.11. If the local code authority has amended a Code or Standard by ordinance, and the requirements are more restrictive than the codes listed above, then such requirements shall be reviewed to determine if they are applicable to the current project. If the designer believes that requirements are applicable and should be included, written approval from the Owner's Representative is required before such inclusion.

ARTICLE 4: OWNER'S RESPONSIBILITIES

- 4.0. The Owner shall provide information regarding his requirements for the Project as well as information required of him in order to promote the orderly progress of the Work.
- 4.1. If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, he shall give prompt written notice thereof to the Consultant.
- 4.2. All of the above items relating to Owner's responsibilities shall in no way abrogate the Consultant's responsibility or limit the Consultant's liability to Owner.

ARTICLE 5: CONSTRUCTION COST

- 5.0. The Construction Cost when used as the basis for determining the Consultant's compensation shall be defined as follows:
 - 5.0.1. For completed construction: the total applicable contract cost of all such work excluding additive construction contract changes resulting from the Consultant's errors or omissions as determined by the Owner's Representative;
 - 5.0.2. For Work not constructed: the lowest bona fide bid received from a qualified bidder for Work within the stated budget;
 - 5.0.3. For Work for which no such bid or proposal is received: the latest approved Detailed Estimate of Construction Cost for work within the stated budget.
- 5.1. Construction Cost does not include the compensation to the Consultant and other special consultants, the cost of the land, rights-of-way, advertising or other costs which are the responsibility of the Owner.
- 5.2. The Owner may provide related labor, materials and equipment for inclusion in the Project without such items being applicable to professional fees.

ARTICLE 6: COMPETITIVE BIDDING REQUIREMENTS

- 6.0 Under statutory provisions of the State of Missouri, the Owner is required to competitively bid all construction projects. Further, ALL costs for any given construction project must be within the funds appropriated for said Project. Consequently, should the lowest acceptable bid or the total of all of the lowest acceptable bids (if bids are received for more than one contract on a project) exceed the Total Allowable Construction Costs, as specified in the Scope of Work, the Consultant shall be required to redesign or perform such corrective work as necessary to allow the Project to be successfully rebid and constructed within available funds, without additional cost to the Owner except the costs of re-advertising the Project for bids. Negotiation of Construction amounts shall not be permitted. All estimates concerning the Project shall be held confidential between the Owner and the Consultant.

ARTICLE 7: ALTERNATES

- 7.0. Upon approval of the Owner's Representative, the Consultant may include no more than four (4) additive alternates in the Project. The alternates must be structured in priority order so the Owner can accept alternates in numerical order.
- 7.1. When the Consultant elects to include alternates for the purpose of determining cost, or to protect the budget established for the

Base Bid(s), or for any other reason, no compensation will be allowed the Consultant for alternates not accepted.

- 7.2. Alternates shall not render the Project unusable. Therefore, the Consultant, in determining his final estimate, must include Base Bid and necessary alternate costs within the funds available for construction, unless otherwise approved by the Owner's Representative.

ARTICLE 8: DIRECT PERSONNEL EXPENSE

- 8.1. Direct Personnel Expense is defined as the cost of salaries and includes mandatory and customary benefits such as insurance, sick leave, vacation, holiday, pensions and other such costs that relate to employees engaged on the Project by the Consultant.
- 8.2. Employees may include, but are not necessarily limited to, architects, engineers, designers, draftsmen, specification writers, stenographers, typists and other personnel engaged in consultations, research, design, document production or other Work pertaining to the Project.
- 8.3. Should Direct Personnel Expense be selected as the method of compensation, the Consultant will submit in writing to the Owner's Representative a complete list of all employees to be engaged on the Project along with a schedule of rates and benefits for those employees.

ARTICLE 9: CONSULTANT'S ACCOUNTING RECORDS

- 9.0 Records and receipts of the Consultant's Direct Personnel, Consultant and costs pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the Owner or his authorized representatives upon request. The Owner's Representative reserves the right to withhold payment of any amounts owed to the Consultant unless or until said records and receipts are received and verified by him when requested.

ARTICLE 10: OWNER'S REPRESENTATIVE

- 10.0 For the purposes of this agreement, the Director, Division of Facilities Management, Design and Construction, or his designee, shall serve as the Owner's Representative. No plans and specifications or changes thereto will be accepted, nor any payments made without approval by both the Owner and the Owner's Representative.

ARTICLE 11: CONSULTANT'S COOPERATION

- 11.0 The Consultant agrees to perform his services under this Contract in such a manner and at such times so that the Owner and/or any contractor who has work to perform, or Contracts to execute, can do so without unreasonable delay.

ARTICLE 12: OWNERSHIP OF DOCUMENTS

- 12.0 Construction Documents, as instruments of service, are and shall remain the property of the Owner whether the Project for which they are prepared is constructed or not. They may be used by the Owner to construct another like Project without approval of, or additional compensation to, the Consultant, provided that the Owner accepts design responsibility for any such additional use.

ARTICLE 13: SUCCESSORS AND ASSIGNS

13.0 The Owner and the Consultant each binds himself, his partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The Consultant shall not assign, sublet or otherwise transfer his interest in this Agreement without the written consent of the Owner.

ARTICLE 14: DISPUTES AND DISAGREEMENTS

14.0 In order to prevent all disputes or disagreements between the parties to this Agreement in relation to the performance on the part of the Consultant, it is expressly agreed and understood that in case any controversy or difference of opinion shall arise between the parties as to quality, quantity or value of the Work, the decision of the Director, Division of Facilities Management, Design and Construction, or his Designee shall be final and binding on all parties. Nothing contained herein shall be interpreted to restrict either party's right to pursue litigation.

ARTICLE 15: TERMINATION

15.0 This Agreement may be terminated by the Owner's Representative upon mailing notice of termination to the Consultant at least five (5) consecutive working days in advance of the date of termination if the Consultant substantially fails to perform according to the terms and conditions of this Agreement in the opinion of the Owner's Representative or funds for the Project are not appropriated or are insufficient to proceed with the Project. The Owner's Representative may also terminate this Agreement by the same procedure at the end of any Phase or part thereof as set forth in this Agreement. In the event of termination, the Consultant shall be paid his compensation for services performed up until the date of termination subject to amounts withheld to satisfy any rightful claim or set-off by the Owner.